

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: 502008CP001929XXXXSB IV

IN RE:

THE ESTATE OF STANLEY ACKER
_____ /

MARK ACKER,

Petitioner,

v.

KAREN ACKER, individually and as Co-
Personal Representative of the Estate of
Stanley Acker, and DAVID ACKER,
individually, and as Co-Personal Represen-
tative of the Estate of Stanley Acker

Respondents.
_____ /

**ORDER APPROVING SETTLEMENT AGREEMENT,
APPOINTING FIDUCIARY, AND DISMISSING ACTIONS WITH PREJUDICE**

THIS CAUSE came on before the Court on November 16, 2010, in the consolidated proceedings styled as: *Mark Acker v. Karen Acker and David Acker*, Case No. 50-2008-CP001929-XXXXSB and *Mark Acker v. Karen Acker and David Acker*, Case No. 50-2009-CP-005014 (the "Consolidated Actions") on the parties' presentation of a Settlement Agreement for approval of the Court following ten days of trial. The Court, having reviewed the Settlement Agreement, having made inquiry of counsel and the parties on the record, and being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED as follows:

1. The Settlement Agreement, attached as Exhibit A, is approved by the Court.

2010 DEC -1 PM 4:49
SHARON R. BROWN, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

2. The parties having informed the Court that they have been unable to unanimously agree on an Appointed Fiduciary (as that term is defined in the Settlement Agreement), the Court hereby selects and appoints Kirk Friedland, Esquire, as the Appointed Fiduciary.

3. The Consolidated Actions are hereby dismissed with prejudice.

4. The Court reserves jurisdiction to enforce the terms of the Settlement Agreement.

DONE AND ORDERED at Delray Beach, Palm Beach County, Florida on this 1st day of Dec, 2010.



MARTIN H. COLIN
Circuit Judge

Copies furnished to:

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SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is made and entered into on the 16th of November, 2010, between Mark Acker ("Mark"), Karen Acker ("Karen") and David Acker ("David") (collectively, the "Parties").

WHEREAS, Mark, Karen, and David are currently parties to litigation pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida styled: *In re: Estate of Stanley Acker, Mark Acker, Petitioner v. Karen Acker and David Acker, Respondents*, In the Circuit Court for Palm Beach County, Florida, Probate Division, Case No. 502008CP001929XXXXSB; and *Mark Acker, Plaintiff v. Karen Acker and David Acker, Defendants*, In the Circuit Court for Palm Beach County, Florida, Case No. 502009CP005014XXXXSB (the "Florida Litigations");

WHEREAS, there is litigation involving the parties pending in New York styled: *Acker Realities, Inc. et al. v. Mark Acker*, Supreme Court of the State of New York, County of New York, Index No. 601262/09 (the "Corporate Litigation");

WHEREAS, Mark, Karen and David are currently parties to litigation pending in New York styled: *Petition for a Compulsory Accounting and Related Relief Pertaining to a Revocable Lifetime Trust Under Agreement By and Between Stanley Acker, as Settlor (now deceased) and Karen Acker, David Acker and Mark Acker, as Trustees, dated March 2, 2008*, State of New York, Surrogate's Court, County of Rockland, File No. 2009-603 (the "Accounting Proceeding"); and

WHEREAS, Mark, Karen and David desire to settle all disputes between them on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00), the mutual

covenants and agreements described herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intended to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Fiduciary Appointment and Voting Rights. The Parties agree that the Court should appoint an additional fiduciary to serve as a Trustee of the Stanley Acker Revocable Living Trust ("Trust") and Personal Representative of the Estate of Stanley Acker ("Estate"). The Parties shall have a period of two days from the execution of this Agreement to agree upon a proposed additional trustee of the Trust and personal representative of the Estate (hereinafter the "Appointed Fiduciary"). If the Parties are unable to agree on the selection of the Appointed Fiduciary, the Parties agree that the Court shall select the Appointed Fiduciary, but in no event shall the Court select Robert Acker. It is the intent of the Parties that the Appointed Fiduciary shall be neutral, impartial and independent. The Parties agree to waive any objections to any Appointed Fiduciary who is selected by the Court. From and after the date of the appointment and qualification of the Appointed Fiduciary, Karen, David and the Appointed Fiduciary shall each be entitled to one (1) vote, and Mark shall be entitled to two (2) votes, with respect to decisions concerning actions as Trustee of the Trust or Personal Representative of the Estate of Stanley Acker; provided, however, that if either of Karen or David dies, resigns, becomes incapacitated, or otherwise ceases to act, and if Mark is then acting, then each fiduciary shall have one (1) vote. In the event any of Karen, David or Mark dies, resigns, becomes incapacitated or otherwise ceases to act, there shall be no successor fiduciary appointed to him or her. The weighted majority decision of the Trustees and/or Personal Representatives, as the case

may be, shall control. Upon the unanimous vote of the Parties, and in compliance with any applicable Florida Statute, the Appointed Fiduciary shall be removed and the Parties shall have a period of two days from the removal to agree upon a proposed additional Appointed Fiduciary, or else, the Court shall select the Appointed Fiduciary in accordance with the terms of this paragraph.

3. Form 706 Audit. Harvey Platt (or any successor selected by Karen or David) will continue to represent the Estate before the Internal Revenue Service and any appellate proceedings associated therewith, and will continue to occupy the position of lead counsel. Mark agrees, for himself and those acting under his direction, not to interfere with or thwart the pending audit, or appellate proceedings, or take any steps that might cause the imposition of any tax or penalties that would not otherwise have been imposed upon the Estate.

Karen and David agree to indemnify and hold Mark and his one-third (1/3) interest in the Estate and Trust, harmless from any IRS penalties (and interest on any such penalties) by virtue of the Form 706 submitted to the IRS. In the event the ultimate resolution of the pending IRS audit, following the completion of all proceedings, including any appellate proceedings, requires the Estate to pay less than \$4,054,977 (such sum is hereafter referred to as the "Threshold") to the IRS in additional tax, interest and penalties, the difference between the Threshold, on the one hand, and the additional taxes, interest and penalties, on the other hand (hereinafter the difference between those two sums shall be defined as the "Balance"), shall be divided such that each of Karen's Trust and David's Trust under the Stanley Acker Revocable Living Trust shall receive 45% of the Balance, and Mark's Trust under the Stanley Acker Revocable Living Trust shall receive 10% of the Balance. If the aggregate amount of assets remaining in the Estate and Trust at the time the foregoing distribution is to be made (the

"Aggregate Amount") is less than the Balance, then the Aggregate Amount (rather than the Balance) shall be distributed in the percentages set forth in the foregoing sentence. The foregoing shares for each of Karen's Trust, David's Trust and Mark's Trust shall be funded pro rata with liquid assets and, to the extent insufficient, with non-liquid assets.

In the event the ultimate resolution of the pending IRS audit, following the completion of all proceedings, including any appellate proceedings, requires the Estate to pay in excess of the Threshold to the IRS in additional tax, interest and penalties (the "Excess"), the portion of the Excess that is constituted of penalties and any interest imposed ^{on such penalties} ~~thereon~~ shall be paid out of Karen's Trust and David's Trust under the Stanley Acker Revocable Living Trust, but the portion of that Excess that is constituted of taxes and/or interest imposed ^{on such taxes} ~~thereon~~, shall be paid equally out of Karen's Trust, David's Trust, and Mark's Trust under the Stanley Acker Revocable Living Trust.

Subject to the indemnification obligation set forth herein, Mark agrees to waive any surcharge claim (and agrees not to initiate any such litigation), whether present or not-yet-matured, against Karen and David associated with (i) the preparation and/or filing of the Form 706 and (ii) for any tax, penalties, and/or interest assessed in connection with the Form 706.

4. Accounting. Within 20 days of the parties' execution of this Agreement, Karen and David shall make available for review and inspection by Mark, at the offices at 46 Broadway, all checks and back-up documentation such as invoices relating to any expense of the Estate, Trust, or Acker business entities, from January 1, 2009 through the present. If Mark objects to any expenditures incurred by the Estate, Trust, or Acker business entities through the date of the execution of this Agreement, he shall notify Karen and David of his objection within 140 ~~120~~ days of the execution of this Agreement. The objection(s) must be provided to Karen or

David in writing and must state the basis for the objection. Karen and David shall then have 30 days within which to provide Mark with a response to the objection(s) in writing. If the amount remaining in dispute exceeds \$25K, and the parties are not able to resolve such objections, the parties agree that the Appointed Fiduciary will resolve the dispute. If the amount remaining in dispute is \$25K or less, then the objection(s) thereto shall be waived.

Mark specifically agrees to waive any objections to the following: the form of the accountings; any attorneys' fees and costs paid from the Estate or Trust for services incurred in connection with the Florida Litigations, the Accounting Proceeding and the Corporate Litigation; any Trust funds used to loan money to KMD or Bluegate; and any attorneys' fees and costs paid from the Estate or Trust for services incurred in connection with any of the pending litigations of the entities (specifically including the property line litigation concerning 60 Cedar Hill Avenue, the quiet title action concerning Orchard Realty, the property litigation concerning Tidewater and Putter, and any eviction proceedings). In addition, Mark waives any right to (and agrees not to seek through judicial procedure or otherwise) future accountings for any periods arising after December 31, 2009.

5. Professional Fees. Mark, Karen and David are to be reimbursed by the Estate and/or Trust 100% of all professional fees, including fees and costs incurred in connection with the Florida Litigations, the Accounting Proceeding, and the Corporate Litigation, paid or accrued through and until the execution of the Agreement and dismissal of the lawsuits referenced herein on the terms set forth herein, but only after all tax liabilities associated with the Form 706, if any, have been paid, the Marital Trust has been fully funded and all specific bequests in the Will and Trust have been fully satisfied. Upon request, Karen, David and Mark agree to produce documents, such as invoices, supporting the amounts of professional fees to be reimbursed, along

with certifications executed by the professionals representing that such professional fees were, in fact, incurred.

6. Administrative Expenses. All administrative expenses, whenever incurred, including professional fees in connection with the administration of the Estate and Trust, shall be paid by the Estate and/or Trust (or, to the extent already paid by Karen, David, or Mark, shall be paid by the Estate and/or Trust to such paying party), as permitted by Florida law. Upon request, Karen, David and Mark agree to produce documents, such as invoices, supporting the amounts of such administrative expenses to be reimbursed, along with certifications executed by the professionals representing that such administrative expenses were, in fact, incurred.

7. Accounting Proceeding. Subject to the provisions of Paragraph 2 above, Karen and David's counsel shall take the lead defense position in the Accounting Proceeding. Karen, David and Mark agree to seek to have attorneys' fees and costs associated with the defense of that litigation paid from assets of the Trust to the extent permitted under Florida or any other applicable law. Mark agrees to withdraw with prejudice the objections that he has filed in that lawsuit.

8. Dismissal of Litigations. The parties agree that the Florida probate court shall retain jurisdiction to enforce the provisions of this Agreement, and the Parties agree to seek the Court's consent to the terms of this Agreement. Upon entry of the Court's Order approving the terms of this Settlement Agreement, Mark agrees to dismiss with prejudice the Florida Litigations; Karen, David and Mark agree to cause the dismissal of the Corporate Litigation through the execution and filing of a stipulation, to be signed by all parties, to discontinue said action with prejudice and without costs.

9. The Car. Mark shall cause Ian Acker to agree to accept the Mercedes offered to

Ian and to execute the release regarding same within 30 days of the execution of this Agreement.

10. Releases. Mark, Karen and David, in their individual capacities and as personal representatives and trustees, shall each provide complete mutual releases of all claims against the other and, where applicable, covenants not to sue, except for the obligations provided for herein. Notwithstanding this paragraph, Mark's future obligations as trustee of the 1987 Trust survive the release provisions of this agreement.¹

11. 150 Burd. Mark shall pay monthly rent for the amount of square footage occupied at 150 Burd (as determined by Mark Glassel) at a fair market rental (as determined by Mark Glassel) for the period beginning May 1, 2009 and so long as Mark shall continue to occupy such space. ~~Arrearages shall be due within 10 days after Mark Glassel's determination is made to the Trust, thereby reducing the amount owed by the Trust to Mark in connection with the \$150,000.00 loan.~~ *Such rent shall be deducted from the \$150,000.00 loan Mark communicated to Mark, and monthly rent shall be due on the first of every month thereafter.* If Mark Glassel is unwilling or unable to perform this function, such function will be performed by the Appointed Fiduciary. Mark agrees to provide Karen and David with a certificate of insurance within 10 days of the execution of this Agreement. Mark agrees to maintain the fire and security alarm systems in good working order and to provide Karen and David with evidence of such upon reasonable request. Mark agrees to allow the space to be shown to prospective purchasers, and to vacate the space upon any sale thereof.

12. The parties agree to divide any Personal Representative and Trustees fees approved by the Internal Revenue Service equally among them (with the caveat that the Appointed Fiduciary shall be entitled to such fees as are approved by the Court). It is the intention of the parties hereto that all Personal Representative and Trustee fees, earned for past,

¹ The foregoing release with respect to the 1987 trust is subject to the review by Karen and David of the most recent tax return for the 1987 trust. Mark shall provide Karen and David with a copy of the tax return no later than 10 days after the execution of this Agreement.

present, and future services, be equally divided among them, unless he/she resigns in writing or is otherwise incapable of continuing in such capacity, as determined by a court of competent jurisdiction.

13. Mark, David, and Karen each agree to resign as trustee of the other's trusts under the Stanley Acker Revocable Living Trust within 10 days of the execution of this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matters reflected herein and supersedes any other agreement or understanding of the Parties with respect to the matters herein contained.

15. Attorneys' Fees and Costs. In any action or proceeding to enforce this agreement, or which arises from it, the Party or Parties who more substantially prevail shall be entitled to recover his, her or their attorneys' fees and costs from the Party or Parties who do not more substantially prevail.

16. Authority to Execute. Karen, David and Mark acknowledge that they have fully discussed this Agreement with their attorneys with respect to the meaning and effect of the provisions of this Agreement and have voluntarily chosen to sign this Agreement, fully understanding its content, meaning, legal effect and consequences, free of any duress or coercion.

Mark Acker
Mark Acker

STATE OF Florida
COUNTY OF Palm Beach

I HEREBY CERTIFY that on this day, before me, an officer duly authorized by the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Mark Acker, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of November, 2010.

(SEAL)

Elaine M. Bucher
Notary Public

Typed, printed or Stamped name
of Notary Public _____



Karen Acker
Karen Acker

STATE OF Florida
COUNTY OF Palm Beach

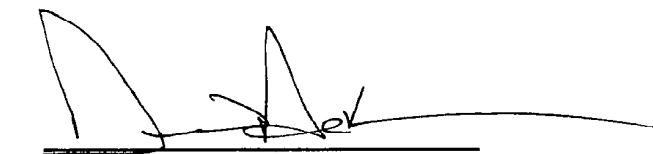
I HEREBY CERTIFY that on this day, before me, an officer duly authorized by the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Karen Acker, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of November, 2010.

(SEAL)

Elaine M. Bucher
Notary Public
Typed, printed or Stamped name
of Notary Public





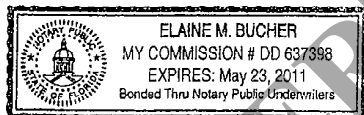
David Acker

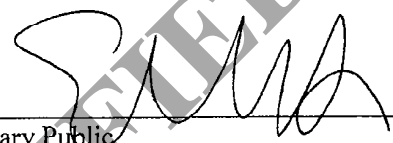
STATE OF Florida
COUNTY OF Palm Beach

I HEREBY CERTIFY that on this day, before me, an officer duly authorized by the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by David Acker, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of November, 2010.

(SEAL)





Notary Public
Typed, printed or Stamped name
of Notary Public _____